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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1308th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Ninth and tenth periodic reports of the Republic of Korea (CERD/C/333/Add.1) (continued)

1. At the invitation of the Chairman, the delegation of the Republic of Korea resumed places at the Committee table.

2. Mr. KIM (Republic of Korea) warmly thanked the Committee on the Elimination of Racial Discrimination for helping his country improve the implementation of the Convention. He would duly inform the Government and the President of the Republic of Korea without fail.

3. Replying to the questions of the members of the Committee about the implementation of articles 2, 3 and 4 of the Convention, he said that Korea's laws and regulations to a large extent reflected the relative homogeneity of Korean society, which had been mentioned several times in the report and had been the subject of many comments by the members of the Committee. That homogeneity accounted for certain aspects of Korea's domestic legal system as it related to racial and ethnic realities. At the time, the authors of the Constitution had not deemed it necessary to include provisions on racial discrimination because the composition of Korean society had been virtually "monolithic". But that did not mean that the Korean authorities intended to maintain homogeneity at all costs: they were well aware of the need to prepare citizens for the process of growing globalization which required them to be understanding, open-minded and willing to live in harmony with the other peoples of the world. Some intellectuals, academics and civil servants were of the view that homogeneity might constitute an obstacle to that preparation. Nor did Korea regard that as an excuse for not taking action to implement the Convention. A human rights bill prohibiting and punishing racial discrimination was to be promulgated later in the year. More detailed information on that subject would appear in the next periodic report.

4. A number of members of the Committee had expressed surprise at the slow progress made in setting up the National Human Rights Commission. Drawing on the experience of other countries, his Government did not want the future commission to operate as a new administrative agency or an office of the Attorney-General, but as an independent body. Hence the involvement of Koreans and non-governmental organizations in that project, which was to take concrete form starting in 1999 at the same time as the adoption of the human rights bill.

5. His delegation had taken due note of the recommendation by Mr. van Boven (Country Rapporteur) that the Republic of Korea should not implement article 3 of the Convention only with regard to apartheid in South Africa, but more broadly, with the aim of prohibiting racial discrimination in Korean society. That aspect would be dealt with in the next periodic report.

6. Mr. AHN (Republic of Korea), referring to the implementation of article 5, noted that, for several members of the Committee, the information

provided in the report had focused too narrowly on the situation of foreign workers. He explained that the drafters of the report had wanted to take account of the considerable interest in that question shown by the members of the Committee during the consideration of Korea's earlier periodic reports. His delegation would try to provide a wider range of information under article 5 in the next periodic report.

7. The "Consulting Centre" referred to in paragraph 28 of the report was in fact the same thing as the "complaints centres" mentioned in the Committee's concluding observations on the previous periodic report, the difference being due to varying English translations of the Korean text. Broad use was made of the Centre: in 1998, it had processed some 1,700 applications, primarily on questions of salary, illness and compensation for industrial accidents.

8. Most of the questions by members of the Committee on paragraphs 28 to 31 had concerned foreigners working as industrial trainees in Korea. The system had been introduced at the beginning of Korea's industrial development in order to alleviate the labour shortage in the industrial sector and provide technical assistance to developing countries. The Ministry of Labour had had to draw up directives (CERD/C/333/Add.1, para. 30) in order to deal with the new situation created by the fact that industrial trainees had often become paid employees without any form of social protection.

9. Replying to a question on the wording of the first line of paragraph 30 of the English text, he said that it should be replaced by the phrase "In case foreign workers perform labour for which they are paid" in order to dispel any ambiguity, since all trainees were paid for their work. All provisions regulating the employment sector were applicable to trainees, who had access to remedies by virtue of the provision of the Constitution guaranteeing effective protection and remedies to everyone within the jurisdiction of the Republic of Korea (para. 33). Trainees also had health insurance protection.

10. There had been major new developments with regard to trainees. In December 1997, the Republic of Korea had amended the immigration control act and henceforth foreign trainees had proper legal protection and could obtain a work permit.

11. Replying to Mrs. Zou, who had read in the report that there were only 563 declared Chinese workers in Korea, whereas 32,644 Chinese lived in the country, and had wanted to know how the other thousands of members of the Chinese community were employed, he said that the foreign worker surveys did not cover all occupations, but only certain categories, such as teachers, artists, researchers and members of the liberal professions, and the tables did not take account of the 26,000 legally employed Chinese trainees or the 21,000 persons of Chinese origin who had been living in Korea for several generations on residence visas and who were employed in various sectors.

12. As for the composition of the category of illegal workers, or some 190,000 persons, he said that it would be better to employ the term of illegal residents, as suggested by one member of the Committee. Those figures had been approximated by the immigration services on the basis of entries and departures registered at the borders and on the assumption that visitors who

had not left the territory were most probably working. The favourite method of entry of illegal residents was the tourist visa or the industrial training contract.

13. In reply to a comment by one member of the Committee, he agreed that the words "overdue payment" in paragraph 32 of the report should be replaced by the words "overtime payment".

14. In order to legalize the situation of illegal foreign workers, the Ministry of Labour had taken a very important step in October 1998 by deciding to apply the labour standards act to that group of persons. However, following the recommendation of ILO experts, Korea had determined that ILO Convention No. 111 was not applicable to illegal residents.

15. Korean women married to asylum seekers were certainly not persecuted because, to date, the authorities had not received any complaints of discrimination on such grounds. African asylum seekers were not mistreated because they were not placed in detention centres, but enjoyed freedom of movement in the territory.

16. He was not aware of any petitions for remedies filed by foreigners for violations of their fundamental rights by administrative agencies (para. 37), either because there had not been any such cases of discrimination or because those persons did not know about such procedures. The Republic of Korea would inform the Committee if such petitions were filed in future.

17. Human rights were taught at the primary school, secondary school and university levels. His Government believed that cultures were different, but equal. Acting on the suggestions made by the members, he assured them that his Government would publicize the Committee's report and the text of the Convention.

18. As to the holding of an annual human rights symposium around 10 December, he said that his country naturally organized much more than just one human rights symposium or seminar every year. The point being made in paragraph 44 of the report was that Korea celebrated Human Rights Day, as was only proper. However, his delegation would recommend that a seminar should be organized on the Convention.

19. Referring to the question of schools for foreigners (para. 45), he said that those were private schools whose courses were taught in foreign languages. At university level, there might be a difference in language skills between students from the private system and those who had attended public school, but foreign students also had the choice of going to Korean schools.

20. There was no discrimination against ethnic Chinese. In 1997, 200 foreigners had been naturalized, including 157 ethnic Chinese. China had become Korea's fourth largest economic partner and there was currently a strong demand for people who knew more about China and spoke Chinese. There was a difference between de jure discrimination, which did not exist in the Republic of Korea, and de facto discrimination, which existed in the minds of Koreans. However, the Government had taken a number of measures

to change attitudes towards ethnic Chinese and foreigners in general. In that context, the financial crisis which had hit the country in 1997 had made public opinion very aware that Korea had isolated itself both commercially and culturally. That had been quite a shock and its impact on Korean mentality had been very perceptible. Positive changes in behaviour had been noted, but much still remained to be done to help Koreans have a better understanding of how the outside world operated.

21. With regard to the small number of children of foreign nationals living in the Republic of Korea, he explained that, although they were perfectly free to settle in Korea with their children, most of the foreigners who had done so in recent years had been trainees who had come without their families.

22. On the situation of children of mixed parentage in Korea (para. 49), he acknowledged that the United States State Department was correct in saying that they were the subject of de facto discrimination. To remedy that situation, the authorities had taken a number of measures on their behalf which could be qualified as "affirmative action", particularly in the area of social policy.

23. The CHAIRMAN commended the Korean delegation for being so frank throughout the consideration of its report. That testified to a praiseworthy readiness to exchange views and conduct a dialogue with the members of the Committee. Many countries which appeared before the Committee maintained that racial discrimination did not exist in their territory and that, consequently, there was no point in adopting relevant legislation. The Committee did not accept that argument: every country must admit that, although it did not have any de jure violations of human rights or racial discrimination, that did not mean that those problems did not arise.

24. Mr. GARVALOV said that he endorsed the Chairman's remarks. The delegation's clear replies to the experts' questions were a useful addition to the information contained in the report. He wondered, however, whether the report did not sometimes extrapolate from certain articles of the Korean Constitution. On several occasions, it seemed that the authors of the report had departed so far from the original that, in the end, they had not faithfully rendered what was actually said in the Constitution. For example, paragraph 21 of the report said that "the Constitution condemns (...) any attempt to justify or promote racial hatred and discrimination", yet the actual words "racial discrimination" did not appear in Korea's Constitution.

25. Korea had made laudable efforts to ensure the implementation of article 7 of the Convention in respect of measures which States parties must take in the areas of teaching, education, culture and information. Few countries had been really sincere and honest with the Committee about the difficulties they were facing in implementing the Convention.

26. He was pleased that the measures taken by the Korean authorities in the area of education to promote understanding, tolerance and friendship between nations and the country's racial and ethnic groups were fully consistent with the provisions of article 7 of the Convention. The school curricula were noteworthy in more ways than one because they taught children dignity and respect for others and contained measures for combating racial prejudices.

Those curricula existed because the Korean authorities had become aware that racial discrimination was a problem in the country. It was encouraging, given the relatively large number of foreigners residing there, that the Korean Government had taken the necessary steps to train and educate the younger generations in order to avoid the pitfalls of racial discrimination.

27. Mr. DIACONU said that he agreed with the Chairman and Mr. Garvalov. The difficulties which the Committee had encountered in considering the report stemmed from the fact that it had had before it interpretations of the Constitution rather than texts clearly condemning racial discrimination. The Committee therefore expected Korea to introduce legislation explicitly condemning racial discrimination and showing that the country had taken the measures required under the Convention. It was a positive fact that the authorities recognized the existence of de facto racial discrimination, yet no legislation condemned it, except with regard to employment. In other areas, the legislation did not meet the requirements of the Convention.

28. One of the essential problems facing the country and which would become more acute in the future was the treatment of legal and illegal foreign workers. Given the sustained pace of economic development in Korea and its increasingly active participation in the world economy and international trade, there was every reason to believe that more and more foreigners would settle there; hence the need to ensure that they were protected against racial discrimination by special legislation.

29. Mr. KIM (Republic of Korea) said that his delegation had attempted to reply as best it could to the observations and questions of the members of the Committee, although it had not been able to provide all the details requested.

30. In sum, it could be said that the Korean administration's new policy was to teach Korean nationals to become world citizens and that a homogeneous population did not mean that Korea was a country which closed itself to outside influences. Without entering into the economic details, the very fact that 60 per cent of Korea's GDP came from foreign trade showed that it was trying to open up both its economy and the attitudes of its citizens.

31. Korea was not xenophobic; indeed, the population was friendly towards foreigners.

32. Although an effort still needed to be made and Korea had to enact new legislation to meet all its obligations under the Convention, it was steadfastly and sincerely working to do so.

33. Mr. van BOVEN (Country Rapporteur), summarizing the discussion, thanked the Korean delegation, and Mr. Kim and Mr. Ahn in particular, for their very frank and useful replies, which had cleared up many questions for the members of the Committee. It was admirable that diplomats were able to provide such detailed and high-quality technical information.

34. One of the points which had emerged during the discussion was that linguistic and terminological aspects sometimes caused confusion because it was very difficult to translate certain concepts and ideas from an Asian

language into a European language such as English. He stressed the role played by the interpreters, the translators and the précis-writers in ensuring a good understanding of those concepts and ideas.

35. He could only agree with Mr. Kim that the situation a country was no excuse for tolerating certain breaches of the Convention. It must be said that, although it had been a party to the Convention for more than 20 years, Korea still did not fully implement some of its provisions, in particular articles 2 and 4, and it was to be hoped that the bill currently being drafted would make it possible to do so. In its concluding observations, however, the Committee was duty-bound to remind the Korean Government of its obligations, not in order to condemn it, but to help and encourage it to step up the process of bringing its legislation into line with the Convention. He asked Korea to provide detailed information in its next report on the legislation adopted, while bearing in mind that what mattered was not only the de jure, but also the de facto situation.

36. Before concluding, he wanted to go back to two points. With regard to asylum seekers, the information which he had received might be erroneous, but that was a question which would have to be clarified. As to article 6 of the Convention, he had been struck by the fact that there had not been a single case reported making use of the existing remedies procedures, including the international procedures under article 14. That prompted him to ask whether the public was sufficiently aware of those procedures. In the same vein and as rightly pointed out by Mr. Valencia Rodríguez, it was important for the Committee's conclusions to be published and for the public to be informed of its work. Such transparency was one of the foundations of democracy.

37. He thanked the delegation of Korea again for its cooperation and looked forward with interest to its next reports.

38. The CHAIRMAN said that the Committee had thus completed its consideration of the ninth and tenth periodic reports of the Republic of Korea.

39. The delegation of the Republic of Korea withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

Response of the Committee to crisis situations

40. The CHAIRMAN said that he would like to make a brief statement which he hoped would be reflected in the press release drawn up at the meeting.

41. The Committee could not pass over in silence the many violations of human rights reported every day in the radio, on television and in the press. He had in mind in particular the problem of the region of the Great Lakes, the scene of outright genocide triggered by racial and ethnic conflicts, the alarming situation of the Kurds and the problem of Kosovo, on which the Committee would have the opportunity to express its views during the consideration of the document submitted by Yugoslavia (CERD/C/364).

42. The Committee was duty-bound to respond to all those problems and he suggested that it should publish press releases and devote a meeting or a press conference to them. One such press release might focus more particularly on the situation of the 30 to 40 million Kurds who were currently the victims of discrimination. Another might be of a more general nature.

43. Mr. SHERIFIS said that he fully endorsed the Chairman's proposal, especially as the problems referred to were directly related to the Committee's work. He suggested that the High Commissioner for Human Rights should be officially invited to attend the meeting on that subject.

44. Mr. FERRERO COSTA said that he wholeheartedly supported that suggestion.

45. Mr. RECHETOV said that the Committee had been one of the first bodies to draw attention to the human rights problems in Kosovo and, despite differences of opinion, the members had all agreed that Kosovo should enjoy greater autonomy. As to the tragedy of the Kurds, if the Committee discussed the problem of their fundamental rights while taking care to respect the territorial rights of the States in which they lived, it had every chance of being heard by the international community.

46. Mr. van BOVEN said that he endorsed the suggestions of the previous speakers. To draw up the press release on the Kurds, the Committee might rely on General Recommendation XXI, which had been adopted at its forty-eighth session and which clearly stated that the identity of peoples must be respected, but without "impair[ing] ... the territorial integrity or political unity of sovereign and independent States ...".

47. Mr. DIACONU said that he also supported the Chairman's suggestion, but thought that one should not be too severe with the Committee, which was doggedly pursuing its painstaking job and was not in a position to influence developments in the political situation in the world. The Committee could draw attention to certain problems, but that was as far as its powers went.

48. The CHAIRMAN said that the Committee was aware of its limits, but must not be discouraged.

49. Mr. de GOUTTES said that he fully approved the Chairman's suggestion. The Committee could not remain silent in the face of the problem of the Kurds and a public press release seemed to be the best idea because, in the past, the urgent action procedure had been applied only to individual States parties.

50. Mr. GARVALOV said that, as the session coincided with a number of events which came within the Committee's mandate, there was good reason to discuss them in the context of an urgent action procedure, but that that did not mean neglecting consideration of situations already included under that item.

51. Mr. LECHUGA HEVIA said that he supported the initiative of issuing a press release on the situation of the Kurds, which should take place during a press conference to ensure that it received public attention. That would also help enhance the Committee's image.

52. Mr. YUTZIS said he agreed with that point, especially since he had always stressed the need to publicize the Committee's work and opinions. He proposed setting up a small open-ended working group to draft the press releases, which would reflect a consensus in the Committee.

53. The CHAIRMAN, associating himself with that proposal, suggested that two or three members of the Committee should produce an outline of such press releases, which a working group could then finalize.

54. Mr. NOBEL said that he endorsed those suggestions and proposed waiting until the end of the consideration of the reports of the Syrian Arab Republic, which was one of the five countries with a Kurdish population, before finalizing the press release on the situation of the Kurds.

55. It was so decided.

Practice of the Committee ((CERD/C/54/Misc.11) (document distributed in the meeting in English only) (item 3 of the list of short notice agenda items) and (CERD/C/54/Misc.16) (document distributed in the meeting in English only))

56. Mr. BANTON requested the members of the Committee to consider the revised version of an informal memorandum that he had prepared for delegations which wanted to have fuller information on the Committee's working methods.

57. Following an exchange of views in which Mr. BANTON, the CHAIRMAN, Mr. SHERIFIS, Mr. DIACONU and Mr. RECHETOV took part, it was decided that the word "memorandum" would be replaced by the words "briefing note" throughout the document, which the Committee would forward to the secretariat as it stood, indicating that it contained instructions for delegations prepared for information only.

Organization of the work of the Committee

58. Following an exchange of views in which Mr. RECHETOV, the CHAIRMAN and Mr. BANTON took part, the Committee decided to postpone consideration of the reports on Bahrain, which had submitted a report that had not yet been translated, Slovenia, whose report was being prepared, and Bangladesh, which had requested a second postponement.

The meeting rose at 12.30 p.m.